

## NEWINGTON TOWN PLAN AND ZONING COMMISSION

### Public Hearing and Regular Meeting

September 22, 2014

#### **I. ROLL CALL AND SEATING OF ALTERNATES**

##### Commissioners Present

Commissioner Frank Aieta  
Commissioner Carol Anest  
Commissioner Michael Camillo  
Chairman Cathleen Hall  
Commissioner Kenneth Leggo (7:05)  
Commissioner Robert Serra Sr.  
Commissioner Stanley Sobieski  
Commissioner Brian Andrzejewski - A

##### Commissioners Absent

Commissioner Richard Khentigan - A

##### Staff Present

Craig Minor, Town Planner

#### **II. APPROVAL OF AGENDA**

Chairman Hall: Are there any changes? And again, make sure everybody that you have the revised agenda that was sent out a couple hours after the one that was e-mailed to us.

Craig Minor: I have no changes to the revised agenda.

#### **III. PUBLIC HEARINGS**

##### **A. Petition 44-14: Special Exception (Section 3.15.6: Health Club at 37 Ann Street, 37 Ann Street LLC, owner, CT Workout, applicant Benjamin Petitpas, 85 Market Square Newington CT, contact.**

Chairman Hall: Is the applicant here? Please come forward and state your name and address for the record.

Benjamin Petitpas: Benjamin Petitpas, 85 Market Square, Newington.

Chairman Hall: Tell us a little about the proposal that you have before us tonight.

Benjamin Petitpas: What I have is a personal training facility, and we are looking to relocate to the 37 Ann Street location to expand our current programs.

Chairman Hall: Do you have any maps or anything that you want to show us this evening?

Benjamin Petitpas: No, I don't have anything.

Craig Minor: There are some plans in the agenda packet. Aerial photographs.

Chairman Hall: I just didn't know if he had anything he wanted to put up on the board.

Commissioner Aieta: Who prepared this? Is it from the staff?

Craig Minor: I had them in the files, yes.

Chairman Hall: Craig, do you have any comments on this?

Craig Minor: The only concern that I had was the amount of parking, so I discussed with the applicant how many customers he was expecting. We have a statement from him that he's anticipating, I believe, thirty persons, customers and staff, at the peak hour, and the zoning regulations for this type of use require only one space for every three occupants which the site does have. There is enough parking on site for the number of persons that he anticipates there being, but I pointed out to him that hopefully he will do well, hopefully he will have more customers and more staff, and asked if there is parking for additional staff. I told him that the Commission would probably want to have a discussion with him about that tonight. So, do you want to speak to that, to your hopes to expand?

Benjamin Petitpas: I'm hoping to take over the whole building there. I became aware that the owner of the building has expansion plans for the parking lot, that he would be able to add, if need be, another thirty or fifty parking spots, I'm not sure exactly.

Craig Minor: Twenty.

Benjamin Petitpas: Was it twenty? I know there already is a spot for expansion.

Craig Minor: So if your clientele does expand and you do need more parking, you are prepared for the Planning and Zoning Commission to tell you that you will have to ask the landlord to create those additional spaces?

Benjamin Petitpas: Yes. We had a discussion about that.

Chairman Hall: Do the Commissioners have questions?

Commissioner Sobieski: Do we know what else might be going in there? Because we are looking at a total of about sixty-three spaces with the twenty additional. If this particular operation is going to be taking thirty, that only leaves thirty-three spaces, in round figures, for the other venue in there, and I believe that I read somewhere that it is subdivided into three areas.

Craig Minor: Right. There's enough parking for the warehousing and manufacturing uses that historically have been going on in the other two sides and still leave the ten spaces for Mr. Petitpas. If the landlord finds another tenant for one of those spaces and that prospective tenant needs more parking than what is left, then that tenant won't be able to get approval, so I won't say the problem would fix itself, but another tenant that requires more parking just won't be able to get a zoning permit to occupy that second or third space.

Commissioner Sobieski: I just don't want to see parking spilling out onto Ann Street and onto Kitts Lane. That's all I was concerned about.

Michael Gallon, 43 Cheney Lane, Newington CT: Madam Chairman, I'm with Mr. Petitpas, may I speak?

Chairman Hall: Certainly, bring the microphone over so you are recorded.

Michael Gallon: I'm a commercial real estate broker here in Newington and I represent Mr. Petitpas in his proposed lease of 37 Ann Street. I will just give you a little history of 37 Ann Street. The building originally was the warehouse and showroom for Bond Dinettes. Bond Dinettes now has their retail location on the Berlin Turnpike. The owner and Mr. Petitpas's proposed location in that building

is the old Bond Dinette showroom. It's the actual retail piece. The balance of that building is used strictly for warehousing for Bond Dinettes. The existing site, I actually went out there today and counted the spaces, there's ten spots in front of what is the showroom piece, and then to the side there is an additional fifty spots. So there is currently parking on that site for sixty cars, and by right I believe the owner can add an additional twenty. That's my observation from going out there and doing a physical count. The other important item to note is that the gentleman who owns the warehouse recently sold and then reacquired the Bond Dinette business, so for the foreseeable future he is going to be using that building as a warehouse for his Bond Dinette business which is on the Berlin Turnpike.

Chairman Hall: Thank you.

Commissioner Aieta: What zone is this in Mr. Planner?

Craig Minor: It is in the PD zone.

Commissioner Aieta: On the agenda, it says 6.15.6, there is no such section. 6.15.4, under 6.15 is store management. And that is not the right section. I might be wrong, might be looking at this wrong.

Chairman Hall: His application says 3.15.

Craig Minor: That's correct, it's 3.15.6. "Recreation such as health clubs, bowling alleys, and amusement enterprises but excluding arcades", so it should be 3.15.6.

Commissioner Aieta: Is a site plan required under the public hearing? I mean, I appreciate the staff giving us an overview of it, but we really don't have a site plan of the parking or what part of the building he is taking over, where the sign is. It's like an almost incomplete application.

Craig Minor: The Commission can always ask an applicant for additional information if they feel that they need it.

Commissioner Aieta: Shouldn't that have been brought in before we put it on the agenda, that we have an actual site plan of the parcel?

Craig Minor: I didn't think so since it's an existing building, but it's certainly your prerogative if you would like it.

Commissioner Aieta: That's been the case in the past; that all applications that come in, we want a site plan showing designated parking. This is (inaudible). Which parking is designated for him, what else is in the building; there's a lot to be desired as to information to make a decision on this application.

Chairman Hall: Any other remarks by Commissioners?

Commissioner Leggo: I just wanted to clarify. Off of Ann Street, that corner that we are looking at where the handicapped spots are, that's where the retail section is?

Michael Gallon: Yes.

Chairman Hall: The east side.

Commissioner Leggo: It looks like there are eight regular parking spaces and three handicapped.

Michael Gallon: That's correct, and then to the south, right around the corner of that building there is a paved lot with fifty spaces.

Commissioner Leggo: Is there any walkway or sidewalk leading from one to the other?

Michael Gallon: Yes.

Commissioner Aieta: Those are all items that should be on the site plan. We shouldn't have to sit here and dissect this by asking you all of these questions. That should all on the site plan. It shouldn't be where we have little information. I don't want to put your client to any additional expenses, but...

Michael Gallon: I understand.

Commissioner Aieta: This is an incomplete application as far as I'm concerned. It shouldn't have been put on the agenda until we have a site plan. He's guessing about the parking, I mean, I don't know, half of it's cut off.

Michael Gallon: My client had one or two meetings or conversations with the Planner and we were not, to the best of my knowledge, we were not told that that was required of us. However, that is easily submittable. There is a site plan on file here in the Town, we can get the site plan to show the parking. It was a building that met the criteria, it had the parking, it's acceptable with the use with a public hearing, so we can certainly follow up with a site plan.

Chairman Hall: And on that, as well as the parking, please show the entrance where people would be entering the building, wherever it is, because I know that there are several doors. Any other questions or comments from the Commissioners before we go to the public? Anyone from the public wishing to speak in favor of this application? Anyone wishing to speak in opposition? Anyone just wishing to speak to the application? Seeing none, what is the pleasure of the Commissioners?

Commissioner Anest: I think we should hold it open so we can get the additional information from the applicant.

Chairman Hall: It would be parking, entrances; anything else anyone wishes to see?

Commissioner Andrzejewski: I just want to clarify - the part of the building that is not being used for the workout space, you mentioned that the previous tenant is going to be using that for storage for his business that was in that space.

Michael Gallon: It has been, and continues to be, ongoing storage for Bond Dinettes. It's always been used by Bond Dinettes. The owner of Bond Dinettes owns the building. He's always used that for his warehouse. I believe he has a couple of people who work there in the warehouse. They just move the product from the warehouse out to the Turnpike for retail sale.

Commissioner Andrzejewski: That portion of the building being used - a new tenant coming in and renting out the space - no additional parking would be needed for that space? The parking that is there right now is ample for whatever this gentleman is asking for?

Chairman Hall: As of this moment, yes.

Michael Gallon: When the building was originally constructed it was constructed with that retail component. They actually had their store there. At that time, that site had to accommodate the retail parking component as well as the warehouse parking component.

Chairman Hall: And then they changed the name to Dinette Depot. And it's currently Dinette Depot.

Michael Gallon: Yes, my error.

Chairman Hall: No, I just want to make it clear, because Bond Dinette was in town for a very long time. It's the same business, it's just a different name.

Michael Gallon: Yes, he sold the business, it was rebranded as Dinette Depot, and he just recently bought it back.

Chairman Hall: And Craig, also on that plan, if they can show how much of the building will be used by this use versus the warehouse.

Benjamin Petitpas: In addition to that, I have talked to the owner about my expansion plans to take over that additional space as well, the space that you discussed.

Commissioner Aieta: If you should expand, you would have to come back and we would want to see the information. We're only looking at the portion you are renting now, at this particular time. You should show on the plan if you are going to put a sign up; we want to see what that sign is going to look like. If not, you would have to come back for that. I'm trying to save you a step. Show the sign, show us a site plan so we can determine exactly what portion you are going to use, show us the parking that is designated for you.

Michael Gallon: And that will be scheduled.....

Chairman Hall: October 8<sup>th</sup>. Our next meeting is October 8<sup>th</sup>, back to Wednesday.

Commissioner Sobieski moved to keep Petition 44-14 open. The motion was seconded by Commissioner Serra. The vote was unanimously in favor of the motion, with six voting YEA.

Chairman Hall: So we look forward to seeing you back here on the 8<sup>th</sup> with all of this information that we have asked for tonight.

#### **IV. PUBLIC PARTICIPATION (for items not listed on the agenda)**

Chairman Hall: At the past couple of meetings there has been question of what can be spoken on and cannot be spoken on, and as time goes on, we are finding that this is an evolving subject. We are going to try to pin this down so that the Commission and the public all have an idea of what we mean by "Items Not on the Agenda".

The purpose is so that no new information can be brought in on things that were being decided that night, especially things that had already had their public hearing closed. Items under "Old Business". You have the ability under Public Hearing to speak, so that has never been an issue. It's just that when we get to "Public Participation" there may be things on the agenda that have already been closed, and therefore we ask the people not bring in new information. When we get to things such as "Communications", we are going to, as a group, decide if that is something that can be discussed because it may help to have new information come in, or you may have questions that we can answer later on.

You also understand that when you are speaking in "Public Participation" it is not a give-and-take. It has never been, and it won't be. But things may be brought up that can be answered later in the meeting. You will probably hear us discuss later tonight how we want to finalize this, but at this point, we are talking about "Public Participation" (which is where we are in the meeting). Items listed on the agenda for action, for instance "Old Business", would not be available to you. Is there anyone who would like to speak on an item that is not on the agenda? If so, please come forward, state your name and address for the record.

Gail Budrejko, 21 Isabelle Terrace: I feel like I'm beating a dead horse, and it's old news, but I really would like to request from this body a clarification regarding land use as covered quite clearly in the 2020 Plan, particularly on pages ten and eleven, because in the Plan identifies 899 acres left as open space, and (inaudible). Open space is 173 and dedicated open space accounts for the remaining 726 acres, but right now I'm confused as to what these designations mean, and who do they apply to regarding building and development. Up until recently I thought I understood, since the definitions are quite clear. For example, dedicated open space: land owned by the federal government, the state, the town, or conservation organizations intended to remain for open space purposes. The recent actions taken by the Town Council and the Building Committee where they proposed and advocated for building the Parks and Rec center on dedicated open space; had it not been for the referendum results, apparently they would have been able to construct this building without so much as any reprimand or reproach. That to me is very worrisome. The referendum may have temporarily saved this piece of land identified as dedicated open space, but unless this designation has some kind of significance, it certainly leaves open the possibility that the Town Council can again take land that was intended for preservation as open space and repurpose it as they see fit. So either they are misinformed, or I am. I really need a clarification on this, so I'm requesting some clarification from this body as to what the designation "dedicated open space means", who must abide by it, and what would need to happen if there is an intent by any body to change the use. Thank you.

Chairman Hall: Thank you Gail. Anyone else from the public wishing to speak?

Jeff Zelek, 55 Welles Drive North: Good evening. I was reading the minutes from the September 10<sup>th</sup> Commission meeting and it looks like there was an exchange between one of the Commissioners and the Town Planner regarding the re-purposing of the CL&P transformer station. I think the question was to the Town Planner to get a legal opinion in writing. I don't see that on the agenda under Communications, so I guess it's okay to ask you this evening: have you gotten this legal opinion, in writing, from the Town Attorney, whether or not an 8-24 was required for the re-purposing of that property? Thank you.

Chairman Hall: Thank you, Jeff. Anyone else from the public wishing to speak?

Rose Lyons, 46 Elton Drive: I just want to thank you for addressing the question of what the public can and cannot speak to, and what is considered "part of the agenda". It hasn't come up just at this particular Commission, it came up at Conservation as well, and I think with more people starting to participate we should know the rules before we start out. I think it's a good idea for everybody and it doesn't cause the tension that it has caused in the past. Thank you.

Chairman Hall: Thank you Rose. Anyone else wishing to speak?

John Bachand, 56 Maple Hill Avenue: I want to echo what Rose just said. I think you will set a precedent, because it did come up at Conservation too, so I think Communications should be able to be discussed. My own case, I submitted a letter once, and I couldn't even talk about it. I have a couple of other things, one for the Town Planner. The property on the top of Cedar Mountain, on Cedar Street, on the corner of Russell Road, the big site work that is being done there - just curious about what is going on because it's obviously stalled. It looks like nothing is going on for several months now, so I was just wondering if he has any report on that. I was also waiting for a legal opinion from the Town Attorney on the subdivision question next to my property so I was just hoping that he may have something on that as well. Thank you.

Chairman Hall: Thank you John. Anyone else wishing to speak?

Gary Bolles, 28 Burdon Lane: Thank you also for the clarification of what we can talk about. It's very much appreciated. I'm quite surprised that maybe Commissions or Boards or committees, these special committees, don't have the 2020 Plan of Conservation and Development at their meetings. I talked to Deputy Mayor Clark Castelle last Wednesday night, Tuesday night, and he said that during

all of these meetings, over a year and a half on the town hall proposed community center renovations committee, nobody even gave the 2020 Plan a thought at all, that they might not be able to put that building in that park. I find that disturbing. I think that the 2020 Plan should be made available, and it's not your, it doesn't fall on you, I just think that it should be available to all the boards, all the commissions, all the committees that are going to be discussing anything that evolves around the 2020 Plan. He also said, which I found startling, that they, which I had brought up, and I think a couple of other people did, that nobody ever gave a thought to the cost of the clean-up involved where the bus garage site is in reclaiming that land. I said to him, we had Arrow Cleaners right next door to our Church of Christ Congregational, it was just a little piece of land, and I think that that clean-up cost us around \$200,000. That's where Farmington Savings Bank is now. We own the land, and they rent it from us, they own the building. But I just wanted to bring that to your attention. I thought that this 2020 Plan should be, it is a document, and it should be, everybody should have it, all the boards, all the Commissions, all the Committees. Thank you.

Chairman Hall: Thank you Gary. Anyone else wishing to speak?

#### **V. REMARKS BY COMMISSIONERS**

Commissioner Leggo: I just want to apologize for coming in late.

Chairman Hall: We understand that, and we waited as long as we could. But you are in.

Commissioner Aieta: Could we answer, talk about, some of the issues that the public brought up? At some point we should be answering these questions. The first one was on the dedicated open space, what our policies are. Unfortunately that never came to the Commission as an 8-24 because it was put off until after the vote, and the vote made the question moot, so there was nothing to review. By our 2020 Plan, "dedicated open space", I don't see how this Commission could have said anything other than that you can't build on that site. I don't know how the other Commissioners feel, but the way that I interpret the 2020 Plan, that's what I would say. As far as the 2020 Plan being provided to other boards and commissions, they should all have the 2020 Plan. It was prepared by this Commission with nine months of input from the public; it was passed on to the Council, Council had final approval of it for the whole town as a document that is used to plan and make decisions. I don't see why other Commissions don't follow that plan when they are looking at anything to do with land use. It's available, everybody should have it. I'm sure that the Conservation Commission has it, I'm sure that the Zoning Board of Appeals has it, the Council is well aware of it. They are the ones who approved it; they had the final approval of it. If they don't use it as a tool when they are looking at building for the town, then shame on them. You can't force them to look at it. The only thing that we can do is, when it comes to us as an 8-24, we use it as our guide as to what, how we make decisions.

The other thing, on the corner of Cedar Street, that's a project that was approved several years ago. The owner of the property I guess decided that he was going to clear it and basically get it ready for development, but that's as far as it has gotten. He's cleared it and put up a silt fence and so on, but we don't know what other activities are going on there, if he sold it, if he has clients, if he is going ahead with the building, we don't know. He has approval for certain things that he can put on that property, and that's where that stands. As far as the Town Attorney on the on the Maple Hill Avenue piece, that's something maybe the Planner could address.

Craig Minor: How about I speak on that when I get to the Town Planner report?

**VI. MINUTES**

A. September 10, 2014

Commissioner Sobieski moved to accept the minutes of the September 10, 2014 regular meeting. The motion was seconded by Commissioner Leggo. The vote was unanimously in favor of the motion, with six voting YEA.

**VII. NEW BUSINESS**

None

**VIII. OLD BUSINESS**

- A. Petition 30-14: Special Exception (Section 3.15.4 Drive through Restaurant) at 3120 Berlin Turnpike ("Panera") Norr Architects, applicant, Newington VF, LLC, owner, Brian Slonski, 325 N. LaSalle Street Suite 500, Chicago IL, contact.

Chairman Hall: Craig is passing out a draft motion and then I'll have him speak to that when he comes back.

Craig Minor: The Commission discussed the site plan rather extensively at the last meeting, and there were a number of concerns mentioned by all of the Commissioners. I think there was a sense that the application was not in a form that could go forward at that time, and the Commission discussed whether to deny it that night, and I suggested the Commission table it to give the applicants the opportunity to withdraw it if they wanted to, so that they could then come back in the future without the history of it having been denied. I discussed that with their engineer a couple of days later, and their engineer told me that he would ask Panera if they wanted to withdraw so that it could start over with a clean slate. I did not get a response as to whether they wanted to withdraw or not. So that is why I prepared the draft motion to deny for tonight.

Commissioner Aieta: Are we talking a time period? Getting close aren't we?

Craig Minor: We're getting close. Yes.

Commissioner Anest: The conversation you had with him, was it a verbal conversation?

Craig Minor: It was e-mail.

Commissioner Anest: Did he respond to your e-mail?

Craig Minor: Yes, he acknowledged that he received my recommendation that they consider withdrawing. He said he would pass that along to Panera, but I did not get a response, I mean, I did not get a follow-up as to what their decision was.

Commissioner Aieta: I think we have given them ample time to try to figure out a way to make this work. It's been around for quite some time. Unfortunately they are trying to take an existing site and re-vamp it into a site that you should be doing from scratch, and it doesn't work. When they build their other facilities that have a drive-through, they're working with a clean piece of land and they make allowances for the queuing and everything else. This is a place that is existing, and there is no room. Their limits of operation or lease boundaries prohibit them from providing us with the correct queuing and the correct number of cars being able to maneuver around on the site, so at this point I would be in favor of denial.



Chairman Hall: Any other comments?

Commissioner Serra: Piggy-backing on what Frank said, I also think that there is just too much of a hazard with pedestrian traffic, with the handicapped spots, people backing out, a lot of the things that Craig cited in his motion. I just think we're looking for an accident waiting to happen. I agree with Frank, I would have to go forward with a denial on this.

Commissioner Anest: I was just going to reiterate what they said. I think during the hearings we all expressed concern regarding safety. I think that our main focus was safety on the site, and trying to retrofit a drive-through where there really shouldn't be one, I think this application should be denied.

Commissioner Aieta: One more thing. We did give them an option, a way to solve the problem, by going back to the property owner and ask to extend the boundaries of their lease to pick up some extra spaces where the queuing could occur at the north part of the parking lot. Apparently the owner of the property denied them, or would not allow them to use those parking places. This site is well over-parked. I've never seen, even at the worst conditions at the holidays, any of these parking places being used. We gave them an opportunity, actually it was a recommendation, to go back, and they want back, and the owner of the property basically said no, you can't use the parking places. I don't see any other choice. They only have four cars in the queue, and we have seen on other properties, like McDonald's and other places, the drive-through at a busy time, you see seven, eight, nine, ten cars in the queue. That would put these right in the travel lane.

Chairman Hall: Anybody else?

Commissioner Camillo moved to deny **Petition 30-14**: Special Exception (Section 3.15.4: Drive through Restaurant) 3120 Berlin Turnpike (Panera), Norr Architects, applicant, Bryon Slonski, 325 N. LaSalle Street Suite 500, Chicago IL, contact.

#### FINDINGS:

1. The revised site plan dated June 25, 2014 contains a number of safety concerns.
  - a. The entrance to the proposed drive through lane runs in a northerly direction, parallel to the southbound lane of the main corridor that runs through the shopping center. There is nothing separating the drive through lane from the main corridor.
  - b. It is not clear if the turning radius at the northeast bend in the lane will be sufficient for a moderate-sized vehicle.
  - c. The site plan shows nine cars in the queue. If the driver of a tenth car wanted to enter the lane it is not clear where he should go to wait. If he attempted to enter the lane already full, he would block the southbound lane of the main corridor.
  - d. There is no "bailout" lane for customers who decide that they don't want to continue waiting.
  - e. All cars entering the parking lot will have to use the one-way entrance on the northeast corner of the parking lot which runs past the handicapped parking spaces. Handicapped drivers are often impaired in their driving ability to some extent.

The motion was seconded by Commissioner Sobieski.

Commissioner Aieta: On the site plan, the number of cars in the queue line, it is a fact that there are nine cars in the queue, but it depends on where you count from. The queue actually starts where you give your order, that's where the queue starts because that's the bottleneck in any drive-through.

People drive up, they can't make a decision, and that's where the queue starts backing up. So from that point to the entrance it is only four cars.

Chairman Hall: I thought it was five. Is that black box the order board? (pointing to the site plan displayed)

Craig Minor: That's the menu board.

Craig Minor: Including that one?

Chairman Hall: Well, there would be one there.

Craig Minor: Okay, one, two, three, four, five, six including one at the menu board, so do you want to change that to six?

Commissioner Aieta: No, I'm just trying to clarify it for the record, if anything came up that we're considering the queuing at the order board.

Craig Minor: Okay, so let's change Finding 1.c. to, the site plan shows...what number do you want, six? Six cars in the queue.

Chairman Hall: Then the tenth car to the seventh. I just want to be sure that they knew the time of this meeting, that they weren't planning on it being Wednesday. I know they were here when I announced it, but in the communication I just want to make sure of that.

Craig Minor: Do you want me to go back to my office and check my e-mails to see if I reminded them that the meeting is tonight?

Chairman Hall: I think I would feel a little more comfortable about it.

Craig Minor I'll do that.

Chairman Hall: We're trying to give them the benefit of the doubt.

(The Town Planner left the meeting, and returned a few minutes later)

Craig Minor: I can't be certain that he knows. We used the expression "next week" in our e-mails. My secretary mails the agenda to all the applicants and she would have mailed it on Thursday, but the "contact person" is in Chicago; Jeff LeBeau isn't the contact person, so I can't stand here and tell you that I know Jeff knew that the meeting was tonight. He should have heard us say. I sent him an excerpt from the minutes to convey to his client, but I looked at it just now, and it didn't specifically say that the meeting would be on Monday. I can't say for sure that he knows that the meeting is tonight.

Chairman Hall: And when is our sixty-five days up, between now and the next meeting?

Craig Minor: October 8<sup>th</sup>? Well, the sixty-five days begins when the hearing was closed, and the hearing was closed I think at the second meeting in August,

Commissioner Aieta: It's kind of a moot question whether it's tonight, Monday night or Wednesday night. We gave him the opportunity to withdraw and you haven't heard anything up until this point, which is Monday night.

Chairman Hall: I know, but realistically speaking, sometimes we can hear at five o'clock on the night of the meeting. That's my concern.

Commissioner Serra: They were here and we stated it at the meeting.

Chairman Hall: I know. Well, I'll toss it back to you folks.

Commissioner Aieta: The outcome is not going to change.

Chairman Hall: Except if they were going to withdraw, then they could come back. Our outcome won't change, but it may make a difference for them if they can somehow pull this together and then come back because, when we deny, they have to wait how long?

Craig Minor: For a special permit or a site plan, I don't think there is any waiting time. I think there is for a zone change or a variance, but I don't think there are any problems with them coming back the very next day with an improved plan for a special permit or a site plan.

Chairman Hall: All right then, I'm going to leave it up to you, but my recommendation would be to move forward.

Commissioners: Yes, I agree.

The vote was unanimously in favor of the motion to deny with six voting YEA.

- B. Petition 31-14: Site Plan Approval (Drive through Restaurant) at 3120 Berlin Turnpike ("Panera") Norr Architects, applicant, Newington VF LLC, owner, Brian Slonski, 325 N. LaSalle Street Suite 500 Chicago, IL, contact.

Commissioner Aieta moved to deny Petition 31-14: Site Plan Approval (Drive through Restaurant) at 3120 Berlin Turnpike (Panera) Norr Architects, applicant, Bryan Slonski, 325 N. LaSalle Street Suite 500 Chicago, Ill, contact.

#### **FINDINGS:**

1. The special permit for this project has been denied.

The motion was seconded by Commissioner Leggo. The vote was unanimously in favor of the motion to deny with six voting YEA.

#### **IX. PETITIONS FOR PUBLIC HEARING SCHEDULING**

None.

#### **X. TOWN ATTORNEY JOHN BRADLEY Q & A SESSION**

Chairman Hall: Mr. Bradley, would you like to come forward please.

Attorney John Bradley: Thank you Madam Chairman. Maybe I can just start by giving a short overview of the rather lengthy history of this. It has been going on for years, but I know some of you have been involved in it for a longer period of time than I have. I guess it starts in 2007 when the Commission repealed the auto use regulations. Following that there was a feeling on the part of the Commission as reflected in its minutes that the Commission may have gone too far when it made a complete repeal of auto uses on the Berlin Turnpike. So, three different planners, Mr. Ed Meehan, somebody from Planimetrics, and later Craig Minor worked on proposed amendments and ultimately in August of 2012 the Commission adopted amendments which created a category called "Motor Vehicle Service Uses" that basically liberalized, that allowed some auto uses on the Berlin Turnpike

but maintained many of the other prohibitions. As we know some owners of existing businesses filed an appeal. They went to court and appealed the Commission's action in amending the regulations. But what they didn't do was get a "stay". What that means is, just filing an appeal does not stop the effectiveness of the action. In other words, we adopted amendments and they appealed from the adoption, but they did not seek a stay. Zoning appeals are governed by Connecticut General Statutes 8-8, and Section 8 says the appeal shall state the reasons on which it has been predicated and shall not stay any proceedings under the decision appeal code; however the court may grant a restraining order. In my view what should have been done by the people who are appealing is they should have asked the court to restrain the Commission from accepting any further applications while their appeal was pending. This was not done, so as a result the Commission was required to accept new applications that came in and to process those applications. Absent a court order saying you can't accept any new applications, this Commission was obligated to accept applications, and as we know, an application did come in while the appeal was pending. That was by Wex-Tuck but essentially Firestone. They applied for a permit under the amended regulations. The permit was granted in March of 2013. The plaintiffs, that is, the business owners, filed an appeal of that special permit, so we had two separate court cases going on. They were not consolidated, and in July of 2013 Judge Mottolese ruled in the amendment case. He upheld those regulations in their entirety. But then these people filed a motion to reargue, and the Judge went on vacation and didn't get around to hearing the motions to reargue until October. In the meantime another decision came out on another case which said that a Commission does not have the ability to grant waivers, and if you recall there were a couple of provisions in the amendment that allowed the Commission to alter or waive certain requirements. One in particular that is at issue here is the requirement of overhead doors facing the street. So even though on July 30<sup>th</sup> the judge upheld the regulations in their entirety, when this new decision came out in October, he said that he was going to allow re-argument, a re-hearing. Then on January 21<sup>st</sup> of this year the judge invalidated those portions of the regulations. He invalidated just those four parts of the regulations. They were the three provisions that allowed for you to give a waiver and the one sentence in the introduction that said "other similar uses". Let me find it. Here it is. "Auto related uses include, but are not limited to, car washes, car and truck rental businesses, and other uses as may be determined by the Commission". So that phrase, "other uses as may be determined by the Commission" was invalidated. The provision that requires entrances and exits be a hundred feet from church, school or playground; the provision that said we could waive or alter that, that's also invalidated. The provision that says "within a hundred feet of a residential zone" also contains waiver language, and lastly, the provision about the overhead service doors, the provision allowing the Commission to alter that requirement, was struck down. So, in response to that decision from the court, those provisions are no longer valid; basically they have been removed by the court.

As far as what should this Commission should do, I believe that this can be handled administratively; that you can simply republish the regulations removing those four provisions. In other words, they are already stricken, and you cannot give any waivers. You need to correct the regulations for the public to know that there is no waiver language. I think that could be corrected administratively by simply republishing your zoning regulations and remove the cited language. I think Craig knows what the language is but I could easily go over it with him. So that's pretty much what the Commission must do as a result of the Judge Mottolese's decision.

The other case was the appeal of the special permit that you issued to Wex-Tuck, Firestone. That appeal was dismissed. The people who appealed the granting of that special permit were not successful. We've had demands from them, and because of the fact of these demands I'm a little uncomfortable discussing this in a public session, but those are the things that are easy to say: that essentially the four sentences in our regulations are gone, they don't exist, and you should republish your regulations to delete them. The second part is, the permit that you granted is a property right. A permit is a valuable right which requires due process to take away from a person, and there is no provision in the law which allows a Commission to revoke or rescind a permit once you have issued it. So, that's pretty much all I want to say.

Chairman Hall: This is a question and answer session. Commissioners?

Commissioner Leggo: On the first part, about changing the wording, shouldn't that be done at a meeting so it is part of an official record that it was done?

Attorney Bradley: I don't think it's required. I'm not saying don't put it in your minutes, this is in the minutes right now. I'm suggesting that you can be in compliance with the judge's order simply by republishing your regulations without the offending language. Now, if you want to have some discussion as to should we make other changes to the auto use regulations, you certainly can do that. When you change regulations you're acting in what is called a legislative capacity; it's different from when you are hearing an application. You can change your regulations whenever time and good sense tell you that they need to be updated. If you think that there are other things that are wrong with the auto use regulations, we certainly can make additional changes. In that case, I would suggest that you have a task force appointed, or act as a committee of the whole to review it, to study it, because the people who complained about it are asking for additional changes. They claim that you made them more non-conforming. They have their businesses, they have valid permits; they can continue doing what they are doing forever. They are protected under the law even though the regulations have changed.

Commissioner Aieta: Isn't it true that if a property is non-conforming by its nature, eventually when it ceases to exist for a certain amount of time it becomes invalid? So in that sense the people have a legitimate concern that their businesses are non-conforming. Also, they brought up the point that they have a problem going to the bank for financing, because they question the zoning, and they have to say we are a non-conforming business and they have problems getting finances to expand their businesses. So these people who have been doing business in town for several years feel that they are at a disadvantage, because if they don't exist for twelve months they could be, just as its nature, non-conformities are basically to, at some point to eliminate them.

Attorney Bradley: That's right.

Commissioner Aieta: A good example is the machine shop that's in the middle of a residential zone, which we have three or four of. If those things went out of business it would revert back to a residential zone and no one would be able to continue, so in its nature it's made to eventually eliminate them, so that's their big push.

Attorney Bradley: It's true that the policy of the law is to eliminate non-conformities, that's right, but their business is protected under the law. One of the changes you made in August was to eliminate the provision that said if it was more than fifty percent damaged these people not have the right, even if their business burned down, to rebuild. But you are correct; if they discontinue, if they stopped for a number of years, if they abandoned the use, but that suggests why you would want to have a broader look at how you can eliminate those non-conforming uses, and that's beyond, that's got nothing to do with Judge Mottolese's decision. It's a valid point to consider.

Commissioner Aieta: If I understand you correctly, with the Firestone application, even though the judge invalidated sections of the regulations that we used to grant them the special exception on that particular site, even though we've done that, I'm not sure where I am going.....

Attorney Bradley: There is a statute, Sec. 8.2h, which says that the regulations that were in effect at the time of the application are the ones that govern.

Commissioner Aieta: Even though he struck down portions of it?

Attorney Bradley: That is correct. Again, it would have been prevented if there had been an order saying we can't take any applications, but that is not the case.

Chairman Hall: I have a question concerning non-conformity as well. Isn't there something considered legal non-conforming?

Attorney Bradley: Right, these are legal non-conforming.

Chairman Hall: Correct. For instance, most of the north end of Newington is legal non-conforming as to the residential building lots, and we certainly can't say that half of Newington would not be able to exist. It was according to the zoning regulations at the time. The banks do look at that, they understand it's non-conforming, but they also understand that it is legal non-conforming.

Attorney Bradley: Right, pre-existing is the word, it's a pre-existing non-conforming use.

Chairman Hall: Correct.

Attorney Bradley: All of these businesses are pre-existing the amendments that we have.

Commissioner Leggo: So I just want to clarify for myself: if a business was to change hands but maintain the same type of business...

Attorney Bradley: That could continue, yes.

Commissioner Leggo: If A sold to B and he continued doing what A was doing.

Attorney Bradley: Right.

Chairman Hall: Any other questions? Everyone is all set. Thank you Attorney Bradley. We appreciate you taking the time.

## **XI. TOWN PLANNER REPORT**

### **A. Town Planner Report for September 22, 2014**

Craig Minor: All right, not much to report. No new zoning issues. Performance Bonds: I did give an updated status on performance bonds. The changes since the last time that I reported to you: Number six, Fountain Point, that's the office park that you went out and visited this past summer. I just got an e-mail from the owner saying that the work is now complete, asking me to go out and inspect it, which I will do and if so, I'll come back to you for your to officially vote to release the bond.

Commissioner Aieta: When you go out there would you take some pictures so we have an idea of what they did so we don't have to go out there.

Craig Minor: Okay. I'll take lots of pictures. The other thing I have to report is Rockledge Drive. That's the subdivision where the developer didn't plant the required street trees. Three home owners have said, yes, they would like trees, and I got three bids from local landscapers to plant the trees, so we are moving forward with that. Newington Junction TOD planning: nothing new to report. Sign Regulations: the committee will be meeting Tuesday the 30<sup>th</sup>, at 3:30. I'll try to remember to send you an e-mail reminding you of the meeting. If the Commission would like me to I can address some of the questions that came up during Public Participation.

Chairman Hall: Sure.

Craig Minor: Let me get my notes.

Commissioner Sobieski: Craig, just a question. Is there a time frame on these bonds? How long or can they hang out indefinitely?

Craig Minor: These are all cash bonds.

Commissioner Sobieski: No, I'm asking if there is a time frame they have to be resolved by.

Craig Minor: Oh, these should have been resolved six months to a year from when they were first taken, 2002, 1995, 2007. We could, if we wanted to, call any of these bonds and hire a construction company to just go in and do the work, but we don't want to do that.

Commissioner Sobieski: If somebody doesn't respond or if you are having trouble getting hold of someone to close out a bond or something like that?

Craig Minor: The answer is, we can use their money to hire a landscaper or a paver to just go in and do it, but we don't want to do that.

Commissioner Aieta: We'll keep plodding along. We've just got to make sure that no new ones get on the list.

Craig Minor: Yes.

Commissioner Aieta: So we clean up the old stuff, and eventually we'll get through them, and at some point if there are some hanging on that we can't resolve after doing our due diligence, we'll have to call the bond.

Craig Minor: Ms. Budrejko asked for a definitive statement about what the POCD says about open space. That's complicated, but I would be happy to put together a memo for your next meeting which would explain what the Plan of Development says about open space, and to what extent it ties the hands of the Town Council from using land in ways that don't reflect the POCD.

Mr. Zelek's question about a written opinion from the Town Attorney on whether there should have been an 8-24 for the parking lot on Garfield Street: yes, that is in writing, it is an e-mail. Mr. Bachand asked for the status of the Town Attorney looking into the validity of the Packard's Way subdivision: the Town Attorney asked me to do some research, and I have completed most of that research, so I'll be meeting with the Attorney probably next week. He will come back with a recommendation. I believe those were the only questions.

Chairman Hall: Something about the top of Cedar Street; do we know anything more about that?

Craig Minor: The reason it has been held up is because the developer needs to get DOT permission to access the site to do the grading, and it takes a while to get an answer from those folks; they're not as fast as you guys are in making decisions. So that is why it is taking so long.

Commissioner Aieta: When he gets an answer, do you think he'll proceed with the plans that he brought in?

Craig Minor: He's requested DOT permission to access the site to do the grading, and I believe there is some question as to the drainage that was approved by P&Z. The State has asked him to do it in a different way, so his engineers are working with the State's engineers. It's that kind of thing that is holding it up.

## **XII. COMMUNICATIONS**

- A. Letter from Town of Wethersfield re 9/16/2014 public hearing on proposed two lot subdivision at 1941 Berlin Turnpike (Russell Road.)

Craig Minor: We got this letter from the Town of Wethersfield as required by statute notifying us of this subdivision within 500 feet of Newington. It's the property on the corner of Russell Road. It's

Cedar Mountain Gravel. They are dividing it in half, and as of now that is all they are doing, just dividing it. Presumably they are doing it because they want to develop it some way in the future, and when they do, by this same law, those plans will have to be referred to us before Wethersfield takes any action on them. If this Commission wants me to I could attend the Wethersfield TPZ meeting, or send them a memo with our concerns, but at the moment, it's just a subdivision.

- B. Email from Jeffrey Zelek re: Petition 25-14: Zone Change (Industrial to PD) at 16 Fenn Road.

Craig Minor: We received an e-mail from Mr. Zelek questioning the appropriateness of the zone change at 16 Fenn Road. His e-mail is in your package, and my reply is in your package. I think they speak for themselves, but if anyone has any questions, I will address them.

Chairman Hall: Anyone have any questions?

Commissioner Aieta: Just give us a clarification. I know the history of this, that they came in with a site plan and a zone change, but they withdrew their site plan, is that correct?

Craig Minor: No, the site plan was denied without prejudice because we ran out of time.

Commissioner Aieta: Does that give them the right not to come in with a site plan? Because the language is pretty clear. I'm trying to find a way to understand what you are saying, but I can't. So, if you would enlighten us as to how this whole thing plays out.

Craig Minor: The regulations reads, and this is 3.18.2 (b) at the bottom of page 43 if you are looking at your regs, it says, "Any application for a change to a PD Zone must be accompanied by an application for Site Development Plan approval in accordance with Section 5.3." That's the site plan section. It goes on to say, "The Commission will consider both applications simultaneously, within the appropriate public notice and scheduling procedure." So, the phrase, "consider both applications simultaneously" is in question and in my opinion, you did. Effectively, you did consider both simultaneously. I'm satisfied that you addressed the intent of the regulations, and the letter of it.

Chairman Hall: They were on the agenda together, right up to the time that Mr. Hayes came in and told us that his prospective tenant had moved on, so it was at the next meeting that we continued with the change in the zoning. They had been together for as long as we thought he was going to be doing something together. As a Commission we decided that we wanted that entire parcel zoned the same so we took action on that. Had he brought something to us, and continued along, we would have had something to vote on as well, but his prospective tenant left.

Craig Minor: Even if the zoning regulations require an applicant for a zone change to submit a site plan along with it to show the Commission what he wants to do if the zone change is approved, that's not binding. If it's approved, he could, the very next day, throw out the site plan and apply for anything that is allowed in that zone, even if he had told you the night before that he was going to build a shoe store, or a book store, or whatever. Once the zone change is approved he could sell the property to someone else who could then apply for site plan approval for any use that is allowed in that zone. The reason I'm saying this is, the point of this regulation is just to give the Commission a sense, non-binding, of what the applicant ultimately wants to do if he gets the zone change. It's not binding, it's just a tool for your benefit, and you had that tool, you had his site plan.

Commissioner Aieta: But he withdrew that site plan.

Craig Minor: It had been denied, actually.

Commissioner Aieta: It was denied, so the way that I read it, if he wanted to continue with the zone change he should have come in with a new site plan.



Craig Minor: He could have, but again, the regulation says that you will consider both simultaneously, and I believe you did.

Commissioner Aieta: But he didn't do that. He didn't come in with both simultaneously.

Craig Minor: Yes, he did.

Commissioner Aieta: He just came in for a zone change.

Craig: No, no, they were submitted simultaneously. They were received all at the same time.

Commissioner Aieta: But we couldn't consider them simultaneously because we denied.....

Craig Minor: I think you did consider them simultaneously in the context of this regulation.

Commissioner Anest: Could you do a time line for us showing when they came in to clarify it in our minds, so that we all feel the same way?

Craig Minor: Sure, I can do that.

Commissioner Aieta: I'd like to hear from the other Commissioners whether they feel that we acted properly by approving this without a site plan when the language in the regulations is kind of clear that they should come in at the same time. We denied the site plan, so we really don't know what he is going to do on that piece of property. You said it doesn't make a difference because he doesn't have to do whatever, but he still has to come in with a site plan. At some point, someone has to bring in a site plan.

Chairman Hall: Right, and then we have the option of approving it or denying it, depending on whether we think it is appropriate for that zone and that position. That's no different than anything else. The whole purpose of doing this was to make that entire parcel the same zone. That's what we did. That was our choice.

Commissioner Leggo: We made it all uniform.

Chairman Hall: We made it uniform. Are you suggesting that we go back and not have that a uniform zone? Because we all thought that that made sense, to change that zone.

Commissioner Aieta: There is no question that it makes sense to change the zone to PD Zone because all of surrounding property is PD. On the other hand, the regulations are pretty clear in my mind as to what the procedures are, and I don't believe that we followed the procedures to the letter of the regulations. That's my only concern, and if we have someone from the public who brought up a concern about it also, it's out there that we might have acted improperly. That's the only thing I'm saying. If other people don't think that's a problem, I'll go along with the consensus of the Commission. I would like to hear what other people have to say.

Commissioner Leggo: I feel that they were both brought in together initially, so we saw a reason for why we were looking to make the change. I think that we did do it at the right point. He did pull it out, but we had already heard, we had already discussed it before he pulled it out, so I think we did act right.

Commissioner Sobieski: I feel the same way that Ken does. They both started at the same time; mid-way, or towards the last week or so he pulled the second application for a fueling station out, but they were both started at the same time and we followed it, ninety percent of the way through. If one of the applications drops out in the middle, we aren't going to start again. I feel that we followed the law.

Commissioner Camillo: I agree with Ken and Stan.

Chairman Hall: At some point he could come back with a fueling station at the spot; who knows? He might get somebody else to back him. Do you remember when we did the parcel next to Wendy's? That had to be changed first, which we did. They were supposed to have a Tim Horton's there. When we approved that, I made it a point to say if anything but Tim Horton's is going to go there, you have to come back before us. Remember how angry they were once Tim Horton's backed out and then Dunkin Donuts had to come in? That wasn't that many years ago, but the parcel was there, and then we had to approve whatever was built there. This happens all the time. Anybody else?

Commissioner Aieta: We should change the language of the regulations so that we're able to do it, so it makes sense. The way that it is written here, we didn't follow the rules.

Chairman Hall: That can go on the list.

Craig Minor: It already is. I put it on the list. And this same rule applies in every one of our business zones in Newington. Every business zone says that if there is a zone change proposed, it must come with a site plan application.

### **XIII. PUBLIC PARTICIPATION**

Domenic Pane, 638 Church St., Newington: As you know I have a lot of auto businesses. In my building I have multiple tenants. If I lose an automotive tenant and I can't find a new tenant for a year and a half, I can't put the auto tenant back in that building, that's why, these regulations, after 12 months, Mr. Minor.....

Craig Minor: Not true.

Domenic Pane: Mr. Bradley just said, after twelve months.....

Craig Minor: He did not disagree with Frank when Frank said it, but he did not concur with it.

Domenic Pane: Well, can I finish?

Craig Minor: Yes, sorry.

Domenic Pane: From the reading of the regulations that I have read, after twelve months it ceases and that's one problem. The other problem is, you cannot expand a non-conforming use, so if I have a tenant there that has an automotive business, and he's doing well, and he says, Domenic, I need a little bit more room, I can't do that because you can't expand an automotive non-conforming auto use, so then I lose a tenant, because I can't expand a non-conforming use. Am I correct Mr. Minor?

Craig Minor: Absolutely.

Domenic Pane: This is why automotive uses need to be evaluated and the regulations need to be gone over with this Commission. The previous Chairman, Mr. Pruet, said we were going to do it, and it hasn't been done yet. Would this Commission please look at it?

Rose Lyons, 46 Elton Drive, Newington: At the last Town Council meeting, I think everyone's minds were on the referendum that night. There was a gentleman who spoke about the property at the top of the hill, which was questioned tonight, and I know there is no dialogue, but maybe after the meeting or something, I can speak with someone about it. That site plan was approved several years ago, and I'm just wondering how long the approval lasts. I remember at one Town Council meeting the Mayor had mentioned the various businesses that were going in there, and they weren't the same as were originally proposed I believe. I'm just curious if they have to come back here or not. During

the four letter word "Toll Brothers" discussion, I think there was some talk about conditions that had to be met on the exit ramp coming off of 5 and 15. I'm just wondering about the status of what has to be done and what will come before you and what won't come before you, what they already have approvals for. This leads me to Newington Junction. I've been asking the Town Council for the last three or four months what the status is on that committee, and Mr. Minor said tonight that there is nothing new. Well, I'm wondering when the next meeting is, where it's going to be held, what time it will be if there is going to be a next meeting? I believe at the July 3<sup>rd</sup> meeting the Town Attorney's advice was sought as to what the committee function was as far as the zoning for Newington Junction. Last but not least, as much as I appreciate speaking to what the public is allowed to speak on, I also appreciate not getting involved in something that might come before you. I think that with questions that arose during the referendum, in my opinion some people that are on Commissions spoke when they should not have spoken, because you never know when it is going to show up here, and I appreciate the way that you, Madam Chairman, handled that situation. It was very very tricky. Thank you very much.

Chairman Hall: Thank you Rose. Anyone else wishing to speak?

Jeff Zelek, 55 Welles Drive No.: Thank you for responding to my letter. I don't think that you should be entertaining changing the language of that regulation. I believe that regulation was written to protect the public from zoning changes that may be arbitrary, so I think it is important that you have a site plan, and you get it simultaneously with the request for a zone change. Regarding the 8-24 referral for Garfield Street: so we do have an opinion that is in writing, it's an e-mail. Have the Commission members seen this e-mail? Can you please read this e-mail into the record so that the public is aware of what the opinion is?

Craig Minor: If the Commission wants me to, I will.

Jeff Zelek: Because the public is very interested in knowing whether procedures were properly followed for the Garfield impound area. If you could, please enlighten the public as to what the Town Attorney's opinion is.

Chairman Hall: We'll take care of that under Remarks by Commissioners, and Chairman, at the end.

John Bachand, 56 Maple Hill: Yes, I would like to know what's in that letter too, and if you don't want to read it into the minutes, maybe you could make some copies and we could get a copy of it. Couple of things I hope you will address in Remarks by Commissioners. First of all, this is really quick, as far as Domenic talking about the one year, you know, you have to keep up with the non-conforming uses, every year. The Planner seems quite certain that that's not true, but I've always understood that, and I see it practiced all of the time. I know properties in New Britain that have non-conforming driveways and they have to close them once a year, so maybe it is just a myth, but I've seen it in practice. So as far as my question earlier, getting an opinion from the Attorney on the subdivision next to me, I hope that will be in writing too so I can get a copy of it. Back to the Cedar Street project at the top of the hill: it was obviously extended, it was approved a long time ago, and I understand the State extended construction projects to obviously give builders more chance in a bad economy, but I think that the way that it is written is that that time limit is for the completion; is that correct? It says five years or seven years or eight years, isn't that for a completion?

Craig Minor: It's not black and white.

John Bachand: I thought I read it exactly, but we can re-visit that another time. When that was originally approved, I wasn't following it, so I've heard different stories: it's a hotel, it's a bank, it's a gas station; do they have to stick with that same layout that they originally asked for? And also, I'll let you discuss it later, I'm curious if they actually have tenants for that spot. I think they were getting close to their time limit and they just decided to get started on it, and I hope that's not the case because if they can't find the tenants for it, we could end up with this thing looking as it is now for a long time. That would not be a good thing. Then, back to the zone change on Fenn Road. I heard

mention that everything around there is PD, but isn't National Welding still Industrial? You guys can talk about this after. Then the next thing is: a lot of talk about these areas that are Industrial, and Newington Junction. Is it this Commission's authority to issue a moratorium on zone changes of one year, two years, whatever? I've seen other towns not even allow new building permits; they're trying to catch up, trying to get a handle on things. So I'm just wondering if that is up to this Commission or if that would have to come to the Town Council. If you could address some of these things, I'd appreciate it.

Chairman Hall: Thank you John. Anyone else wishing to speak?

Robert Amenta, owner of the property and business Modern Tire at 3455 Berlin Turnpike: I would like to speak to the four invalidated sections of the auto use regulations. There are two cases that are involved, and they are intertwined because the permit that was issued to Wex-Tuck is based on invalidated regulations, that we have appealed. The validation of their permit gives validation to the regulations that we have been stating from the beginning are incorrect. I'd like to echo Dom's comments in regard to the impact on our property and our businesses. It affects our value, it affects the climate, it affects not only the (inaudible) but also the inability to do any modifications to our building. Our counsel could not be present tonight, he's out of town, but I'm sure he would disagree with some of the comments that Attorney Bradley stated tonight. Specifically I know that he would disagree with the administrative approach as far as changing the regulations. I really think that should go to a public hearing. I think it's in the 2020 Plan of Development and that is something that should not be disregarded, and that is something that the public would have great interest in, to see how this unfolds. The other thing that I think that our attorney would disagree with is his interpretation of 8.2.h. in regards to when the regulations were invalidated. So I really think that it is in the best interest of both parties that this be revisited and it be revisited very soon. Thank you.

Chairman Hall: Thank you Bob. Anyone else wishing to speak?

#### **XIV. REMARKS BY COMMISSIONERS**

Commissioner Aieta: I'd like to hear from the Planner on some of the questions that were brought up. I know he was writing, so, then I might have a comment after he speaks.

Craig Minor: Okay. Mr. Pane's comment about losing his tenant: I misspoke; it is in the regulations, but it's not enforceable. It's like one of the four regulations that were struck down by Judge Mottolese: it may be on the books, but it's not enforceable. You don't lose a non-conforming right merely for disuse. You have to do something affirmatively to abandon it. You have to rent that space to a conforming use to lose your right to rent it to a non-conforming use. Mr. Zelek expressed his point about the important points of the regulation. He would like the Town Attorney's e-mail read into the record. I can bring that next month, or put it in your packet; how should we get it to the public? You all have it; I e-mailed it to you.

Commissioner Anest: Well, we talked about it, it's in our minutes from the last meeting.

Craig Minor: Verbatim?

Commissioner Anest: Well no, it's not verbatim, but we did discuss the e-mail at our last meeting.

Craig Minor: I have no objection to sharing it. I probably should check with the attorney first, but I have no objection to sharing that e-mail with a member of the public. So if the Commission wants me to, I'll check with the Town Attorney and unless he has an objection, I'll forward it to Mr. Zelek.

Chairman Hall: Cedar Street, it was a five-year approval.

Craig Minor: Yes. There was a time during the last decade when the General Assembly kept changing the shelf life, as I call it, of zoning and wetlands permits. They changed it like two or three times. They added five years, I mean, it's always been five years, but then they added two years, but only if the application had been approved within a window and had not expired, so it's very complicated. The Hunter, the Shoppes at East Cedar, whatever it's called, their site plan was approved by the Commission at a time when site plan approval was good for five years, but a couple of years later the Legislature retroactively gave them a few more years, and that's why that site plan is still valid. They are into the "stoppage time" that the Legislature awarded a couple of years ago. We have a couple of sites in Newington that are in that situation, where they have gone beyond the original five years, but are still valid because the Legislature gave them a couple of extra years.

Chairman Hall: Then when they get to that seven, they have the right to come back and ask for an extension, don't they?

Craig Minor: Yes, but I think the more interesting question is, do they have to? If they have done nothing, if they haven't broken ground, then yes, clearly they need to come back and get an extension. But what if they are ninety-five percent done, do they need to come back for an extension? I don't think so. But what if they are only fifty percent done? At what point have they "immunized" their approval, which is a term that is used? I don't know. It's probably on a case-by-case basis, and why, unless the zoning regulations have changed, why would a town want to invalidate an approval that it gave five, six years ago? Unless something dramatic had happened to change the character of that neighborhood such that today the Commission wouldn't like something to happen that they approved five or six or seven years ago. I'm not giving you a definitive answer to the question, because I don't know if there is a definitive answer.

Commissioner Aieta: But in fact that they have started the site plan, the drainage, I think they have started the project.

Craig Minor: I know that if this Commission decided that it did want to invalidate that site plan, it would have to go through the legal process, as Attorney Bradley alluded to. There has to be "due process". An approval is something of value, it's something that the developer, or owner, literally takes to the bank. So you can't revoke it without going through due process, which speaks to the point that I was making to Mr. Bachand before: yes, the statute says that a subdivision is invalid if certain things don't happen, but there has to be due process; the Commission can't just take away that right, it has to go through a legal process.

Commissioner Anest: They came before us with their site plan, but it's not what they are going to be building now. So they are going to have to come back to us, correct?

Craig Minor: Correct. Yes, and they are aware of that. They have told me over the past six to twelve months that they are considering a different type of use, and they are well aware that they need to come back to you for your approval of that.

Commissioner Aieta: That project, it was approved as a phased project, so that should be kept in mind. The public should be aware that they could come in and just do the gas station. There is a gas station approved there. That the gas station could come in as the first part, and they could come in next and build the retail part, and carry on until they get tenants, but they could start with anyone of the phases that they want to. I believe that is the way we approved it.

Chairman Hall: There was also a provision for a traffic light that they worked long and hard on, and re-construction of the exit/entrance ramp, so this is not something that is going to be done in a day. Not that the developer was going to do the revamp of the exit/entrance, that's the State, but they had thrown that into the mix too.

Craig Minor: Well, but at their expense.

Chairman Hall: Correct.

Commissioner Aieta: The applicant can abide by the site plan, or they can come in with a change and change the uses they proposed when we gave the approval.

Craig Minor: And they are aware of that.

Commissioner Sobieski: Just a suggestion. Perhaps you and Craig might like to have the Town Engineer present when we go out to Packards Way. It's only a thought, but he could be at the site on October 8<sup>th</sup>, if there are any grading questions.

Craig Minor: We'll consider it.

Commissioner Leggo: One of the gentlemen had a question on the re-zoning on Fenn Road. Do we just want to clarify that? That has nothing to do with Welding.

Chairman Hall: Yes, because the adjacent parcel is, well, I'm not sure it's really adjacent because you have the busway in between, that's State property.

Craig Minor: Right, the busway is in between.

Commissioner Leggo: I know that we had discussed it at the August meeting.

Craig Minor: The National Welding property is still zoned Industrial. I don't know if the party that is being considered to acquire it plans on coming in for a zone change. Obviously it depends on what they plan to use the property for, but we haven't been approached with any talk of a zone change for the National Welding site. CTfastrack, it's zoned Industrial, and I imagine DOT is just going to leave it that way; no need to change the zoning for CTfastrack since it is not going to be developed in any other way in the near future.

Commissioner Aieta: Just one quick thing because someone brought it up. In the 2020 Plan, for Newington Junction, this Commission put in language that Industrial land could not be changed to a use for houses. I know we made that provision in the 2020 Plan; it's in there. Industrial land, because we have so little left, we should try to keep that as part of our tax base, and not use it for housing.

Commissioner Anest: It's on page eight; we emphasize, the Plan shall discourage any change from Industrial, Commercial zones to residential.

Chairman Hall: And following up on that, copies of the 2020 Plan were given to every Board and Commission in town, but what they have done with it, we have no control over. There were enough copies made for all of the Boards and Commissions.

Commissioner Aieta: It was also presented to the library.

Chairman Hall: It is in the library.

Craig Minor: And it's on the website.

Chairman Hall: If people take the time to look for it, it is around and the Commissions do have it.

**XV. CLOSING REMARKS BY THE CHAIRMAN**

Chairman Hall: Before I forget, I want to reiterate that next meeting is the 8<sup>th</sup> of October, but we are having an off-site meeting at 6:15 that night, so the 8<sup>th</sup> will start at 6:15, it still should be light enough, because the time doesn't change until November, so at 6:15 we should be okay.

In the mean time, if you are afraid that you are going to be a little late, or whatever, just get out there on your own. I want to wish all of our people who will be celebrating Rosh Hashanah a happy New Year, that's Wednesday, that's the reason for our meeting tonight, Rosh Hashanah is a happy celebration in the Jewish calendar, followed by Yom Kippur which is a solemn celebration, which I believe is next week, at the end.

Craig Minor: Saturday.

Chairman Hall: Again, Happy New Year, we will see you on the 8<sup>th</sup>, have a good two weeks.

**XVI. ADJOURN**

Commissioner Leggo moved to adjourn the meeting. The motion was seconded by Commissioner Serra. The meeting was adjourned at 8:55 p.m.

Respectfully submitted,

Norine Addis,  
Recording Secretary